

Loan No. DW-9931

**STATE OF IDAHO  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
LOAN OFFER, ACCEPTANCE AND AGREEMENT  
FOR DRINKING WATER TREATMENT  
DESIGN AND CONSTRUCTION**

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**SECTION I. INTRODUCTION**

The Idaho Department of Environmental Quality (Department) is authorized by Title 39, Chapter 76, Idaho Code, to make loans from the State Drinking Water Revolving Loan Account (Account) to assist public water systems in the construction of drinking water treatment facilities. The Department has determined that the Falls Water Company, Inc. (Applicant/Borrower) has established eligibility for a loan under the terms of the Idaho Code and IDAPA 58.01.20, the Rules for Administration of Drinking Water Loan Program (the Rules).

A completed application for a Drinking Water Design and Construction Loan has been submitted to the Department by the Applicant. The Department hereby offers a loan to the Applicant according to the terms and conditions contained in this document and the Rules.

**SECTION II. DESCRIPTION OF PROJECT**

This loan offer is for design and construction of the following project:

- A.     Loan Project Number:         DW-9931
- B.     Applicant:                   Falls Water Company, Inc.  
                                      1770 Sabin Drive  
                                      Idaho Falls, ID 83406
- C.     Terms:                       \$1,200,000 at 3.25% interest to be repaid in biannual  
   installments over 20 years.
- D.     Project Description:         The construction of a new well and related equipment and  
   water rights. Construction will also prepare for future  
   disinfection system, site piping, flow meters and valving.



## E. Estimated Project Budget

1.	Administrative Fees	-0-
2.	Engineering Fees	-0-
3.	Construction	\$619,357
4.	Other (Water Rights)	<u>580,643</u>
5.	Total	\$1,200,000

**SECTION III. GENERAL CONDITIONS**

This offer may only be accepted by signature by an authorized representative of the Applicant. Upon acceptance by the Applicant, this offer shall become a loan agreement (Agreement) and the Applicant shall become a Borrower. By accepting this offer, the Borrower agrees to all terms and conditions set forth in this document and the Rules:

The Borrower agrees:

- A. To not transfer, assign or pledge any beneficial interest in this Agreement to any other person or entity without the prior written consent of the Director of the Department of Environmental Quality (Director); To not enter into sale, lease or transfer of any of the property related to the project; To not make any additional material encumbrances to the project without the prior written consent of the Director; To not incur any liabilities that would materially affect the funds pledged to repay this loan without the prior written consent of the Director; To not delegate legal responsibility for complying with the terms, conditions, and obligations of this Agreement without the prior written consent of the Director; Notwithstanding any other provision of this paragraph, the Borrower may sell or otherwise dispose of any of the works, plant, properties and facilities of the project or any real or personal property comprising a part of the same which shall have become unserviceable, inadequate, obsolete or unfit to be used in the operation of the project, or no longer necessary, material or useful in such operation, without the prior written consent of the Director.
- B. To enter into such contractual arrangements with third parties as it deems advisable to assist it in meeting its responsibilities under this Agreement.
- C. To fulfill all declarations, assurances, representations and statements in the application and all other documents, amendments and communications filed with the Department by the Applicant in support of the request for this loan. Which application is attached hereto and

incorporated by reference herein.

- D. To comply with applicable State and Federal employment requirements including, but not limited to, Equal Employment Opportunity and Civil Rights requirements.
- E. To make efforts to award subagreements to Minority and Women-owned businesses (MBE/WBE). The fair share goals, 1% for MBE and 1% for WBE, will be in bid solicitations and documentation of efforts to obtain MBE/WBE participation will be required of any contractor who fails to attain the goals. Quarterly reports of MBE/WBE utilization will be prepared on forms supplied by the Department.
- F. To provide evidence of ownership in the form of fee simple title or long-term lease and right of access or easements for real property on which the project is to be constructed. Clear title to all real property necessary for the successful operation of the facilities shall be guaranteed by the Borrower for the useful life of the project.
- G. To take affirmative action to ensure that the project shall be completed and operated in conformance with federal and state laws relating to occupational health and safety.
- H. That if prior to completion of this Agreement the project is damaged or destroyed, there will be no reduction in the amounts payable by the Borrower to the Department.
- I. That in the event there is any default in the payment of either the principal amount or the interest due under this Agreement, or any breach by the Borrower of any of the terms or conditions of this Agreement, the entire principal amount and whatever interest is due to the date of payment may be declared due and immediately payable. The amount of such default shall bear the same interest rate as applies to the principal of this loan from the date of default until the date of payment by the Borrower. All costs incurred by the Department due to such default, including court costs and attorney's fees, shall be repaid by the Borrower to the Department.
- J. That any waiver by the Department at any time of the rights or duties under this Agreement shall not be deemed a waiver of any subsequent or additional rights or duties under this Agreement.
- K. That the use by the Department of any remedy specified in this Agreement for its enforcement is not exclusive and shall not deprive the Department of the right to seek any other appropriate legal or equitable remedy.
- L. That this Agreement is binding upon the Borrower and the Department, and any person, office or entity succeeding the Borrower or the Department.
- L. To comply with all applicable federal, state and local laws.

#### **SECTION IV. PROJECT MANAGEMENT**

The Borrower agrees to:

- A. Require the prime engineering firm(s) and their principals retained for engineering services to carry professional liability indemnification to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability indemnification shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability indemnification must cover all services rendered for all phases of the project, whether or not those services are state funded, until the certification of project performance is accepted by the Department.
- B. Comply with the Public Contracts Bond Act, Title 54, Chapter 19, Idaho Code, including requiring the prime construction contractor retained for construction to carry performance and payment bonds equal to one hundred percent (100%) of the contract price. The bond will be released when the constructed facility is accepted by the Borrower.
- C. Assure that contracts related to the project which provide for arbitration allow appeal of any resulting arbitration decision to a district court or allow the arbitration to be non-binding on both parties if either party desires not to use arbitration as a method of dispute settlement.
- D. Jointly with an engineering consultant provide assurances that the physical and operational integrity of the works, when constructed, will achieve the level of treatment provided for in the design specifications.
- E. Provide for the accumulation of funds (consistent with Idaho Public Utilities Commission (PUC) approval) through charges made for services or otherwise, for the purposes of (1) establishing a fund dedicated solely to the repayment of principal and interest on this loan, (2) capital replacement and (3) future improvement, betterment, and extension of such works occasioned by increased usage on the facility.
- F. Provide a plan and program for an equitable user charge system (consistent with PUC approval) for payment of operation and maintenance of constructed facilities. The user charge system shall be approved by the Department and enacted by the Borrower prior to receiving final payment. Make available on an equitable basis the services of the project to the residents and commercial and industrial establishments of the area it was designed to serve.
- G. Develop and adopt a water system protection policy approved by the Department prior to receiving final payment of loan funds.

- H. Provide, to the Department for approval, an operation and maintenance manual for the project. The manual shall be approved by the Department prior to receiving final payment of loan funds.
- I. Provide adequate staffing and qualified operation and maintenance personnel as specified in the operation and maintenance manual approved by the Department.
- J. Assure that the operator in charge of the facility has a level of competency commensurate with the nature of the facility. He (She) must be certified as a Drinking Water Operator in a class equal to or greater than that of the facility.
- K. Assure that treatment facility personnel shall participate in operator training programs approved by the Department and designed to assure competence in the operation and maintenance of the facility.
- L. Commence satisfactory operation and maintenance of the drinking water treatment facility on completion of the project in accordance with applicable provisions, rules of the Department and any other applicable law, rule or regulation and not discontinue operation or dispose of the facility without the written approval of the Department.
- M. Review and update the user charge system, consistent with PUC approval, during the life of this agreement to assure that all costs including applicable debt retirement, operation and maintenance are offset by sufficient revenues.
- N. Maintain project accounts in accordance with generally accepted accounting principles issued by the Financial Accounting Standards Board (FASB).

#### **SECTION V. SPECIAL CONDITIONS**

- A. The Borrower shall complete the attached project schedule and submit to the Department's Idaho Falls Regional Office for approval on or before February 5, 2007. No funds shall be disbursed per this Agreement until a project schedule has been approved by the Department. The Department approved project schedule shall be attached to this Agreement as Attachment A and incorporated by reference as if fully set forth herein. The Borrower shall strive to complete the project in accordance with the approved project schedule.
- B. All amendments to the project schedule must be approved in writing by the project engineer in the Department's Idaho Falls Regional Office, prior to becoming effective.

## **SECTION VI. SECURITY REQUIREMENTS**

The Borrower agrees:

- A. This loan will be evidenced and secured by a promissory note in the amount of \$1,200,000 plus additional accrued interest, if applicable. The loan will be repaid solely from revenues of system. A copy of the promissory note will be attached to this Agreement and incorporated by reference.
- B. Within 5 years of project completion, establish a reserve account in the amount equal to 1 year's repayment of principal and interest due on this Agreement (consistent with PUC approval). In the event Borrower fails to make any repayment due on this Agreement, Borrower shall immediately use the funds in the reserve account to pay the past due principal and interest on this Agreement. Borrower will inform the Department in writing when funds from the reserve account are used. Within 30 days of using the funds in the reserve account, Borrower will replenish the reserve account in an amount equal to the amount borrowed from the reserve account. The reserve account may be used by the Borrower solely for the purpose of securing repayments on this Agreement.

## **SECTION VII. LOAN DISBURSEMENTS**

The Borrower agrees:

- A. This loan shall be used solely to aid in the financing of the Borrower's project described in Section II above.
- B. Requests for actual disbursement of loan funds will be made by the Borrower using forms provided by the Department. Upon approval of the disbursement request by the Department loans funds shall be released to the Borrower.
- C. The costs set forth in Section II have been determined by the Department to be eligible costs for funding. Some of the costs, however, have been estimated, and the actual costs may differ from such estimated costs. A project review by the Department will determine final eligible costs for the project.
- D. If the actual eligible cost of the project is determined by the Department to be lower than the estimated eligible cost, the loan amount will be reduced accordingly.
- E. An increase in the loan amount as a result of an increase in eligible project costs shall be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Department for approval prior to incurring any costs above the eligible cost ceiling.

- F. Payment of the final five percent (5%) of this loan shall be withheld until the following requirements are met:
1. The Borrower's engineer certifies (a) that the project has been constructed according to plans and specifications previously approved by the Department and (b) that the project is fully operational; and
  2. The Department has inspected the project and verifies the engineer's certification; and
  3. The Department has determined that all terms and conditions of this agreement have been met; and
  4. A final loan repayment schedule has been completed; and
  5. All security requirements of Section VI have been satisfied.
- G. This offer is subject to the existence of the offered sum of money in the Account at the time of payment. Should the offered sum of money not be available in the Account at the time of payment, the Department hereby agrees to pay the Applicant the offered sum of money on the basis of the Applicant's priority position immediately upon the accrual of said sum in the Account.

#### **SECTION VIII. REPAYMENT TERMS AND SCHEDULE**

The Borrower agrees:

- A. This loan shall be repaid in the manner set forth in the promissory note that shall be attached to this Agreement upon project completion and incorporated by reference.
- B. To pay biannual payments of principal and interest and to fully amortize this loan not later than twenty 20 years from project completion. Interest will begin accruing with the first disbursement. At the end of construction accrued interest will either be paid to the Department or incorporated into the final loan amount if the approved amount has not been exceeded.
- C. This Agreement shall remain in full force and effect until all loan proceeds, including principal and interest, have been paid in full or the contract is otherwise suspended or terminated by the Department.

**SECTION IX. SUSPENSION OR TERMINATION OF LOAN AGREEMENT**

- A. The Director may suspend or terminate this Agreement prior to final disbursement for failure by the Borrower or its agents including engineering firm(s), or subcontractor(s) to perform. The Agreement may be suspended or terminated for good cause including, but not limited to, the following:
1. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, receipt of stolen property or any crime of tortious conduct; or
  2. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years' imprisonment or any crime involving affecting the project; or
  3. Violation(s) of any term of this Agreement; or
  4. Any willful or serious failure to perform within the scope of the project, plan of operation and project schedule, terms of engineering subagreements, or contracts for construction; or
  5. Utilizing a contractor or subcontractor who has been debarred for good cause by any federal or state agency from working on public work projects funded by that agency.
- B. The Director will notify the Borrower in writing and by certified mail of the intent to suspend or terminate this Agreement. The notice of intent shall state:
1. Specific acts or omissions which form the basis for suspension or termination; and
  2. Availability of a contested case hearing, before the Board of Environmental Quality, conducted as provided for in the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23.
- C. If the Borrower does not initiate a contested case hearing before the Board by filing a petition within the time period specified by the Rules of Administrative Procedure Before the Board of Environmental Quality, IDAPA 58.01.23, the Department may thereafter terminate or suspend the Agreement by written notice to the Borrower. If the Borrower initiates a contested case, the termination or suspension shall be determined by the Board.
- D. The Borrower shall perform no work under this Agreement after receiving a notice of intent to suspend or terminate until all administrative proceedings and appeals therefrom are final or the Department reinstates the Agreement as provided herein.



- E. Upon written request by the Borrower with evidence that the cause(s) for suspension no longer exists, the Director may, if funds are available, reinstate the Agreement. If a suspended Agreement is not reinstated, the loan will be amortized and a repayment schedule prepared in accordance with the provisions of the Agreement.
- F. No terminated loan shall be reinstated. Terminated loans will be amortized and a repayment schedule prepared in accordance with the provisions of this agreement.

#### **SECTION X. ACCESS AND INDEMNIFICATION**


The Borrower agrees to:

- A. Provide the Department, or its authorized agents, and the Environmental Protection Agency, access to all files, records, accountings and books relating to the management and accountability of this loan.
- B. Indemnify and save harmless the Department, its agents, and its employees from any and all claims, actions, damages, liabilities and expenses directly or indirectly connected to the Borrower or its agents, employees, contractors, or assignees actions related to the location, design, construction, operation, maintenance, repair, failure or deactivation of the project or any part of the project.

**SECTION XI. OFFER**

The offer set forth herein must be accepted, if at all, on or before February 5, 2007. An acceptance must be accompanied by a resolution of the Applicant's governing body authorizing the signator to sign on the Applicant's behalf for the purpose of this agreement.

Dated December 6, 2006.

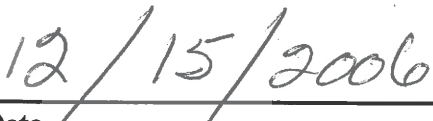
  
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Toni Hardesty  
Director  
Department of Environmental Quality

**SECTION XII. ACCEPTANCE**

Falls Water Company by and through its undersigned representative, accepts the foregoing offer and agrees to discharge all obligations and to comply with all terms and conditions contained herein.

  
\_\_\_\_\_  
Representative

  
\_\_\_\_\_  
Name and Title of Representative - type or print

  
\_\_\_\_\_  
Date